

Variations 07/02 - 07/06

to proposed

Nelson Air Quality Plan

May 2007

Variation 07/02
to
proposed
Nelson Air Quality Plan

**Amendment to definition of ‘lawfully approved’
(A2-55)**

NELSON CITY COUNCIL

Effective from 12 May 2007

Variation 07/02

Proposed Amendments to proposed Nelson Air Quality Plan:

- a. In A2-55 ('lawfully approved') clause d) replace "1974" with "23 August 2003".
- b. In A2-55 ('lawfully approved') after clause iii), add a new clause iv) as follows:

"An authentication report from a person approved by the Council stating that the small-scale solid-fuel burning appliance or open fire existed in the building in question prior to 23 August 2003, and in the case of an open fire an opinion as to whether that fire is 'operable' (in terms of the definition in A2-63A),"

Explanation for the Proposed Variation:

1. This variation simplifies the process for homeowners to replace, with a 'clean air' approved burner, enclosed burners or open fires that were not 'lawfully approved' when they were installed. Under the current Air Quality Plan, homeowners often have to lodge a resource consent application to legitimise such fires, before they can replace them, since a new burner can only replace a 'lawfully approved' one.
2. The proposed amended wording under b) makes it possible for an existing burner or fire to be authenticated by a person approved by Council. This would fall to a Council inspector, or to a building consultant approved by the Council as having expertise in the evaluation of enclosed burners and open fires with regards to age and operability. Authentication by this process will be much simpler and less costly for the homeowner, and in most cases will avoid the need for a resource consent application to be lodged.
3. The authentication would simply say that the fire or burner existed in the house prior to the Air Plan, allowing it to be replaced by a 'clean air' approved burner as a permitted activity under the Plan. The authentication would not be a building consent or an unauthorised building report to confirm that the existing installation meets the Building Code and is safe to continue to use. The authentication would merely simplify the process of replacing the burner or fire with a 'clean air' approved one.
4. The Variation under part a) allows this process to also be used by a wider range of homeowners, for any burner installed before the Air Plan was notified (August 2003), not just those installed before 1974.
5. This proposed new process will help improve air quality by removing a potential barrier to people replacing their older, more polluting fires with modern cleaner burners.

Submissions:

1. Any person may make a submission on the proposed change. You may do so by sending a written submission to the Nelson City Council, addressed to:
‘Air Quality Plan Variation 07/02’, Nelson City Council, PO Box 645, NELSON.
The submission should be either on one of the forms available at the Nelson City Council Planning counter, or in a similar format.
2. The closing date for submissions is **Friday, 15 June 2007**.

Variation 07/03
to
proposed
Nelson Air Quality Plan

Amendment to definition of ‘urban area’
(A2-86)

NELSON CITY COUNCIL

Effective from 12 May 2007

Variation 07/03

Proposed Amendments to proposed Nelson Air Quality Plan:

In A2-86 ('urban area') clause b), delete the words "(other than a privately-initiated change)".

Explanation for the Proposed Variation:

1. The Air Quality Plan includes a map defining the "urban area" that is subject to various rules, including the rules regulating domestic fires and burners.
2. Recognising that the map will become dated as resource consents and rezoning under the Nelson Resource Management Plan (NRMP) expand the urban limits over time, the "urban area" definition in the Air Quality Plan contains words stating that "urban area" also includes:

b) any land subject to a notified Variation or Plan Change (other than a privately-initiated change) to the Nelson Resource Management Plan that re-zones the land as Residential, Inner City, Suburban Commercial, Open Space and Recreation, or Industrial Zone...
3. Late in 2006 Hearing Commissioners considered the privately-initiated Plan Changes 05/03 and 05/04 to the NRMP concerning land owned by Stoke Valley Holdings Ltd and Solitaire Investments in and around Ngawhatu Valley. The Commissioners found the words "other than a privately-initiated change" inappropriate in the case of the Stoke Valley and Solitaire Plan Changes, and recommended the different wording applying to privately-initiated plan changes be removed from the Air Plan definition.
4. This amendment will ensure that all new areas zoned for urban use will be subject to the air quality rules that apply to the 'urban area', irrespective of the mechanism employed in securing the rezoning. This will be consistent with the air quality objectives for the city. New urban areas, which were previously rural, will have the same domestic fire controls applying to them as the existing urban area (i.e. woodburners cannot be installed in new homes or buildings, but low emission pellet fires can; and existing fires can only be replaced with 'clean air' approved burners).

Submissions:

1. Any person may make a submission on the proposed change. You may do so by sending a written submission to the Nelson City Council, addressed to:

'Air Quality Plan Variation 07/03', Nelson City Council, PO Box 645, NELSON.

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2. The closing date for submissions is **Friday, 15 June 2007.**

Variation 07/04
to
proposed
Nelson Air Quality Plan

Small-scale application of agrichemicals

NELSON CITY COUNCIL

Effective from 12 May 2007

Variation 07/04

Proposed Amendments to proposed Nelson Air Quality Plan:

- a) **Insert in Chapter A2 (Meaning of Words), a new definition A2-73B, as follows:**

“**Small-scale application** means the application of agrichemicals on a site involving, over any 24 hour period, less than 500g of agrichemical when applied in solid form, or 15 litres of agrichemical mixture applied in liquid form (when mixed as specified on the product label).”

- b) **In rule AQR.56.1 insert at the beginning of clause a) the words “other than for small-scale application,”. Move clause a) to clause c), deleting the text “, and”. Re-label existing clauses a) to c) accordingly. Insert the text “, and” at the end of the new clause b) (the former clause c).**
- c) **In rule AQR.56.5 (Explanation) insert at the beginning of the first sentence the words “For all but small-scale application,”.**
- d) **In rule AQR.56.5 (Explanation) insert after paragraph three, the words “‘Small-scale application’ is defined in Chapter 2, A2-73B.”.**
- e) **In Appendix AQ7, insert after clause AQ7.1, a new clause AQ7.1A, as follows:**
- “For **small-scale application** (see definition A2-73B) of agrichemicals the provisions under **User Training** c); **Written Records** d); and **Notification Requirements** f) and h) do not apply.”

Explanation for the Proposed Variation:

1. When the proposed Air Quality Plan was notified in 2003 the controls applying to domestic and similar small-scale use of agrichemicals (herbicides and insecticides) were less onerous than those applying to commercial contractors using larger quantities of agrichemicals.
2. After considering submissions made on the proposed Air Quality Plan, a number of amendments were made to the agrichemical rules in the Plan. The unintended consequence of these changes was that all users of agrichemicals in the current version of the Plan are now treated similarly, including domestic and other small-scale users.
3. While a homeowner spraying their roses or weeds in their lawn needs to be required under the Air Plan rules to follow the product label directions, and to avoid drift onto their neighbour’s property, it is unreasonable for such persons to have to comply with other rules in the Plan more appropriate for larger-scale applications (such as the need to undertake a training course and to be accredited as a ‘certified operator’, to prepare

a spray plan prior to application and to provide it to affected parties on request, and to comply with the mandatory parts of NZ Standard 8409:2004, Management of Agrichemicals).

4. The Variation therefore proposes:

- In clause a) to create a new definition for what constitutes small-scale use of agrichemicals, so that such use can be treated differently to larger scale use. The thresholds for the amount of agrichemical that is 'small-scale application' have been selected to reflect reasonable domestic-scale use e.g. 15 litres is the amount held in a knapsack spray unit, or represents three fills of a standard 5 litre hand-held pressure sprayer.
- In clause b) to exempt 'small-scale application' of agrichemicals from the mandatory parts of NZ Standard 8409:2004, Management of Agrichemicals (which are aimed at larger scale commercial and business users of agrichemicals).
- In clause c) to amend the Explanation to the rule to reflect the new words inserted by clause b), and in clause d) to add a cross reference to the new definition of 'small-scale application'.
- In clause e) to insert a new clause into Appendix AQ7. The appendix contains the detailed controls on the use of agrichemicals. The amendment would exempt small-scale application of agrichemicals from some of the more onerous requirements aimed at larger scale use. Small-scale users however would still have to follow the product label directions, comply with the restrictions on spraying on public land, and ensure there was no drift onto neighbouring properties. This would allow enforcement action to be taken against such a user in the event of an adverse effect on the environment or on neighbouring properties.

Submissions:

1. Any person may make a submission on the proposed change. You may do so by sending a written submission to the Nelson City Council, addressed to:

'Air Quality Plan Variation 07/04', Nelson City Council, PO Box 645, NELSON.

The submission should be either on one of the forms available at the Nelson City Council Planning counter, or in a similar format.

2. The closing date for submissions is **Friday, 15 June 2007**.

Variation 07/05
to
proposed
Nelson Air Quality Plan

**Clarification of time available for replacement of
domestic burners**

NELSON CITY COUNCIL

Effective from 12 May 2007

Variation 07/05

Proposed Amendments to proposed Nelson Air Quality Plan:

- a) In rule AQR.25.1 insert at the end of clause a) the words “and where a cessation date is specified in Rule AQR.24.1cc), the replacement occurs prior to that date,”.
- b) In AQR.25.5 (Explanation) insert at the end of paragraph three, the words “, and the replacement occurs prior to any mandatory phase-out date for use of the existing burner if a date is specified in rule AQR.24.1cc)”.

Explanation for the Proposed Variation:

1. Mandatory phase-out dates are currently specified in the Air Quality Plan for enclosed burners that are not ‘clean air’ approved under the Air Plan and that existed before August 2003. The mandatory phase-out dates apply in Airshed A (Bishopdale/Hospital/Victory/Washington valleys) and in Airshed B (Stoke, Wakatu and Tahunanui).
2. This amendment does not change the phase-out dates, but clarifies that if a homeowner wishes to replace their old burner with a new one authorised under the Plan, then that replacement needs to occur before the mandatory phase-out dates already specified in the Plan. This brings the rule into line with the provisions applying to open fires (rule AQR.25.1b), and makes the timeframes clearer to homeowners contemplating replacing their old burner with a new one.

[It should be noted that there are no mandatory phase-out rules for the area of the urban area (The Wood, Brook, Nile St, Atawhai, The Glen). Existing, non-clean air approved burners in these areas can continue to be used for as long as the owner wishes, and there is no deadline regarding when such burners can be replaced with a ‘clean air’ approved burner.]

Submissions:

1. Any person may make a submission on the proposed change. You may do so by sending a written submission to the Nelson City Council, addressed to:

‘Air Quality Plan Variation 07/05’, Nelson City Council, PO Box 645, NELSON.

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2. The closing date for submissions is **Friday, 15 June 2007**.

Variation 07/06
to
proposed
Nelson Air Quality Plan

‘Operable’ open fires

NELSON CITY COUNCIL

Effective from 12 May 2007

Variation 07/06

Proposed Amendments to proposed Nelson Air Quality Plan:

- a) **In A2-63A ('operable') after the words "safely support a fire" insert the words ", and that has functioned solely as an open fire since the date of notification of this Plan".**
- b) **In AQR.21a) (Prohibited Activities - Rule) insert at the beginning of clause ii), the words "from any small-scale solid-fuel burning appliance installed" and at the end of the clause insert the word "or".**
- c) **In AQR.21a) (Prohibited Activities - Rule) insert after clause ii, a new clause iii), as follows:**

"from any open fire installed in any residential unit or other building after the date of notification of this plan, plus the rebuilding of any open fire that previously has been modified to be inoperable,"
- d) **In AQR.21.5 (Explanation) in the first sentence replace the word "installation" with the word "use".**
- e) **In AQR.21.5 (Explanation) in the second sentence delete the words "the installation of".**
- f) **In AQR.21.5 (Explanation) in the last sentence of the first paragraph, after the words "The prohibition also applies" insert the words "to enclosed burners" and at the end of the sentence (after the words "such a fire") insert the words ", and to new open fires or the re-commissioning of inoperable open fires".**

Explanation for the Proposed Variation:

1. A key plank of the Council's strategy for reducing Nelson's PM₁₀ levels was first to 'turn off the tap' – that is, to stop the growth in the number of fires discharging into the already overcommitted airshed. Under the strategy no new open fires were to be allowed in urban Nelson.
2. There is a potential ambiguity in the Plan as to whether in some circumstances the rules could allow an inoperable open fire to be re-commissioned i.e. a growth in the number of fires. The intention of the proposed Plan was that new open fires should not be allowed after the date of notification of the Plan. In some situations it could be argued that an inoperable open fire could be re-built to operable status. The fire

would then have 'existing status' allowing subsequent replacement with an enclosed burner.

3. The provisions in the Plan should be as clear as possible, and have the same meaning to all readers. Therefore the amendments aim to clarify Council's original intention.
4. The proposed changes in paragraphs d) and f) do not relate to the above issue, but take the opportunity to amend other wording in the Explanation to the rule. Under the Resource Management Act it is the discharge to air (i.e. the use of the fire) that is regulated rather the installation of the appliance itself. The proposed wording better reflects this.

Submissions:

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2. The closing date for submissions is **Friday, 15 June 2007.**